BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of the Courts Below.

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, was delivered orally December 29, 1939, and appears in the record at pages 205-9. It was not reported.

The opinion of the Court of Appeals for the Seventh Circuit was filed March 6, 1941, and appears in the record at pages 442-8. It has not yet been reported in the Federal Reporter but only in 48 U. S. P. Q. 614.

Jurisdiction.

See Petition for Writ of Certiorari, (*supra*, page 5)

Statement of the Case.

The essential facts and issues of the case are stated in the accompanying Petition for Writ of Certiorari and in the interest of brevity are not repeated here.

Specification of Errors.

The errors which petitioner will urge if the writ of certiorari is issued are that the Court of Appeals for the Seventh Circuit erred:

1. By holding that the license agreement furnished immunity from suit for infringement by the sale of jogger Model 873, which is of different size than the Models 112 and 1121 therein licensed.

2. By failing to hold that a license limited to two named models, differing from each other only in size, does not license other models of a different size.

3. By holding that claim 2 of the first patent is not infringed because elements of the claim are in the accused device cast integrally in one piece.

4. By holding that claims 1, 4 and 5 of the second patent are not infringed because (a) a cam has been substituted for the shroud of the claim, and (b) two reciprocating arms are used instead of one as called for by the claim.

5. By holding, without any statement of reasons, that claims 2 and 3 of the second patent are not infringed by the accused device which, in the respects covered by these claims, is identical with the disclosure of the patent.

6. By failing to hold that all the claims in suit are infringed.

7. By failing to give due weight (or any weight) to the findings of the District Court who heard the testimony, saw all the witnesses, and made a finding of the credibility of petitioner's sole witness, as well as findings based on conflicting testimony.

Summary of Argument.

Petitioner adopts its "Reasons for Granting the Writ" set forth in the petition (*supra,* pp. 7-8) as a summary of its argument. In the interest of brevity these points will not be repeated here but will be discussed in the argument in the order set forth in the petition.

ARGUMENT.

Point 1. The Court of Appeals Has Construed a License to Manufacture, Use and Sell Two Specified Machines Embodying the Inventions of the Patents in Suit to Be a General License under the Patents, Limited Only to the Licensee's "Field" of Business, in Violation of the Plain Terms of the Contract, Thus Creating a Precedent Which Throws Doubt and Uncertainty Upon the Scope of All License Agreements Restricted on Their Face to Specified Models or Sizes of the Patented Device, and Raising an Important Question of General Public Interest and Concern Never Decided by this Court.

The sole right under the patents in suit, granted by the license, executed on August 10, 1931, relied upon by respondent, is contained in the following language (R. 191-2):

> "Jogger hereby grants unto Multigraph the exclusive license to make, use and sell joggers known as models 112 and 1121 and embodying" the inventions of the patents in suit.

For this grant of rights to two named models, the Court of Appeals has substituted a grant of rights to any size or model jogger useful in the "office equipment field," the field of business in which the licensee is engaged.

It is probably not excessive to say that in the United States at the present time there are in force and effect hundreds of licenses on their face limited to specified models or sizes of devices embodying the licensed inventions. Prior to the instant case such licenses have been interpreted according to their plain and clear meaning. With the decision of the Court below standing uncorrected, however, a precedent has been established creat-

ing doubt and uncertainty as to the meaning of these contracts, and a fertile source of conflict has been created. We believe that the question of the proper construction of licenses of this character has never been passed upon by this Court but that it is a question of widespread public interest which justifies a review of the instant case on a writ of certiorari.

The error of the decision is manifest. On its face the language of the grant is clear and unambiguous and was so regarded by the District Court (R. 205). The language is not rendered ambiguous or uncertain by consideration of the nature of the subject matter involved or the other provisions of the contract.

Prior to the execution of the agreement the licensor had been manufacturing at least three different sized joggers known as Models 112, 1121 and M-24 (R. 68, 156). The Models 112 and 1121 had been manufactured and sold by petitioner to the Multigraph Company for attachment, respectively, to its 66 and 86 multigraphs (R. 68, 87). When the subject was first discussed of granting a license to the Multigraph Company so that it might manufacture the 112 and 1121 joggers for itself, rather than buy them from petitioner, the president of petitioner company offered a license of the 112 and 1121 joggers limited to the use of those joggers with the Models 66 and 86 multigraph (R. 204). This limitation was not agreed upon, and the contract as executed recites (R. 191) that Multigraph is desirous of obtaining a license to manufacture jogger Models 112 and 1121 "to be applied to their products as from time to time manufactured." The significance of this clause is shown by the testimony that the Models 112 and 1121 joggers were used not only with the 66 and 86 multigraphs but also with other presses: the 112 jogger with multilith Models

100 and 196; the 1121 jogger with multilith Model 206 and multigraph Model 57 (R. 79-81). The multilith machines were being developed at the time of the execution of the license contract (R. 72-3), and it was obviously for this reason that the restriction in use of the licensed joggers to the 86 and 66 multigraph was rejected and the understanding reached that these joggers might be applied to any products from time to time manufactured.

However, one exception to this broad field of permissible use was made in the granting clause of the license in the following language:

> "* * * provided, however, that Multigraph shall have no right to manufacture said Joggers for M-24 and Multicolor type presses." (R. 192)

Although the Multigraph Company was not then manufacturing M-24 and Multicolor type presses, it was in the process of merging with the Addressograph Company which was manufacturing them (R. 82-3, 161). Model 112 jogger could be and had been used previously with such presses (R. 157, 172, District Court Finding No. 13, R. 212) which were of the same width as Model 112 jogger (R. 124). Despite this uncontradicted fact, the Court of Appeals in part predicated its construction of the contract upon this proviso to the grant. The opinion states (R. 445):

> "Most significant is the fact that after granting to M Company the exclusive license to make joggers in paragraph 1, it excepted therefrom, in the same paragraph, 'joggers for M-24 and Multicolor type presses.' If M Company were restricted to a jogger of the exact sizes and dimensions of 112 and 1121, why except joggers which were not identical therewith. Yet joggers for M-24 and Multicolor type presses were excepted. If said grant were limited to the exact structures of 112 and 1121, the parties would not except two other known makes, neither of which was of the dimensions of 112 or 1121. * * *
> * * *

> "There is a fatal inconsistency between the provision which followed the words 'provided' and a construction of the contract which limited M Company to joggers of the exact dimensions of 112 and 1121. In other words, joggers for M-24 could not be used with the specific joggers known as 112 and 1121. Therefore, there could be no possible explanation for excepting 'joggers for M-24,' if it were not intended that M Company might make joggers of the kind *like 112 and 1121**, but differing in size from them."

In this quoted matter the Court made a grievous error: it disregarded the word "said" modifying "joggers" in the proviso, and treated this exclusion from the grant as an exclusion of "two other known makes" of joggers, *i. e.*, two models different from the 112 or 1121 models. This is a plain distortion of the English language. "Said joggers" in the proviso definitely relates to the previously mentioned joggers, to-wit, "joggers known as Models 112 and 1121." Given its clear meaning, there is no inconsistency in this clause as a whole. The proviso is not an exclusion of two known joggers from a broad grant but a limitation on the use to which two specific joggers may be put.

Another error of the Court in the matter above quoted is its statement that "joggers for M-24 could not be used with the specific joggers known as 112 and 1121." On its face this statement is meaningless, as one jogger is, of course, not used with another. Judging from the context, the Court intended to say that the 112 or 1121 joggers could not be used with the M-24 or Multicolor type presses. Such a finding would support the reasoning of the Court but would be contrary to the uncontradicted evidence (R. 157, 172).

A clear weakness of the opinion is that it recognizes, and finds "significant," the fact that the contract uses

* Italics in the original.

"models" and "types" in the plural (R. 445). This use of language might have been confirmed by the third "Whereas" clause of the contract which refers to "two types of joggers known as Models No. 112 and 1121." This plural use of "type" clearly is a recognition that the differences between Models 112 and 1121 demarked a difference in type, and as the only difference between these two models is one of size, "type" must be related to "size." The Court's decision, however, reduces the two types to one type.

Despite the fact that the language of the contract is clear and unambiguous, the opinion also, in part, is based upon the supposed conduct of the licensee in "making different sized frames for its joggers immediately after the sale and license contract was executed." This is a plain mistake. The license was executed in 1931, and the only evidence establishing a date for the sale of a jogger different in size from the licensed models is that on pages 101-2 of the record where it appears that Model 863 jogger was first sold with the Model 300 multigraph which was introduced in 1935 or 1936.

A similar error of fact is reflected by the statement in the opinion (R. 445) that

> "* * * it approaches the absurd to assume the parties restricted M Company to machines of the exact dimensions it used as attachments to its multigraph models 66 and 86, when, at the time, M Company had an additional model 57 and was preparing for the trade two or three other models which were not of the same dimensions and which were by it, later numbered 206, 296, and 300.
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> "These different models called for different sized attachments."

The record does not support these statements. Each of the models named by the Court was used with either the

112 or 1121 jogger so far as this record discloses (R. 79-81) except the Model 300 multigraph which was first manufactured in 1935 or 1936 (R. 101-2). The only differences in the dimensions of the various models developed in 1931 shown by the evidence are differences in maximum size of the paper operated upon by them (R. 93). Despite these differences in paper size, the presses themselves were substantially the same width as either the 66 or 86 multigraphs (R. 72-3).

Over petitioner's objection (R. 66), respondent had introduced testimony by the Treasurer of the licensee to the effect that he had intended to acquire a license for use in the "office equipment field" (R. 71-2). In the Court of Appeals respondent contended (opinion, R. 443):

> "* * * that joggers were of two classes, one for use in the office equipment field and the other for the commercial printing field. Its license covered the first named field (the office equipment) with two exceptions provided in the last clause of paragraph one. M Company was engaged in the office equipment field only, * * *."

The Court held (opinion, R. 445):

> "* * * it (the Multigraph Company) was licensed by plaintiff to make, use, and sell models to be attached to such multigraphs in the office equipment field."

The words "office equipment field" are not to be found in the written contract.

In the light of prior decisions of the same Court of Appeals, its construction of the license can derive no support from the oral evidence of the licensee's intention or subsequent conduct. In *Kline* v. *Yokom,* 117 F. (2d) 370 (C. C. A. 7), the Court said (p. 373):

> "* * * when the instrument shows upon inspection a complete legal obligation without any uncer-

tainty or ambiguity as to the object and extent of the engagement, it is conclusively presumed that the whole agreement of the parties was included in the writing. Under such circumstances it is not permissible to establish by oral evidence a different contract from that expressed in the writing."

In *In re Chicago & E. I. Ry. Co.*, 94 F. (2d) 296 (C. C. A. 7), the Court said (p. 299):

"* * * The intention of the parties must be found in the language used to express such intention; and if the court finds as a matter of law that the contract is unambiguous, evidence of the intention and acts of the parties plays no part in the decision. The conduct of the parties may fix a meaning to words of doubtful import. It may not change the terms of the contract. * * *

"If by mistake the parties followed a practice in violation of the terms of the agreement, the court should not perpetuate the error."

As the language of the instant license is unambiguous, the ultimate conclusion of the Court can rest upon only one foundation, *i. e.*, that the designation of Models 112 and 1121 in the granting clause of the contract was merely by way of illustration of the class of joggers useful in the field of business of the licensee, and that such reference to specific models served only to restrict the license to the office equipment field.

By this decision the question is baldly presented whether patent licenses, in terms limited to designated models or sizes, nevertheless convey rights to all embodiments of the inventions useful in the same field as those models named. The patentee's right to grant a license restricted to a particular field of use has been upheld by this Court in *General Talking Pictures Corp.* v. *Western Electric Co.*, 305 U. S. 124, 127. Can he not also grant a

license restricted to the embodiment of the invention in specified models of particular size? While this question does not appear to have ever been decided by this Court, the principles enunciated in the *Talking Pictures* case fully confirm the propriety of such a restriction. The Court said (305 U. S., at p. 127):

> "The question of law requiring decision is whether the restriction in the license is to be given effect. That a restrictive license is legal seems clear. *Mitchell* v. *Hawley*, 16 Wall. 544. As was said in *United States* v. *General Electric Co.*, 272 U. S. 476, 489, the patentee may grant a license 'upon any condition the performance of which is reasonably within the reward which the patentee by the grant of the patent is entitled to secure.'"

This Court there gave effect to a restriction on use, and found a sale for use in a different field to be an infringement. The Court of Appeals for the Seventh Circuit has clearly erred in failing to give similar effect to the restriction in the license here involved.

Point 2. The Action of the Court of Appeals, in Predicating Its Construction of the License Contract upon a Mistaken View as to the Language of That Contract and upon Assumptions of Fact Contrary to the Evidence, and in Refusing to Modify or Recede from These Mistakes upon Petition for Rehearing, is a Departure from the Accepted Course of Judicial Proceedings Which Calls for the Exercise by This Court of Its Power of Supervision to Insure the Administration of Justice in the Lower Courts.

As above pointed out, the opinion of the Court of Appeals involves serious mistakes of fact. These mistakes are not conclusions drawn from conflicting evidence but assumptions of fact contrary to the only testimony in the record on these various points. In the petition for rehearing filed in the Court of Appeals, attention was clearly

directed to these errors and the correct facts were given with record references. Despite this showing, the petition for rehearing was denied without comment. Petitioner concedes that this Court cannot review on the merits the thousands of decisions of inferior courts annually rendered, but this Court will exercise its power of supervision when the lower court "has so far departed from the accepted and usual course of judicial proceedings* * * * *" as to merit a correction by this Court. In our view the substitution of assumptions for uncontroverted facts shown by the record is a gross departure from the accepted course of judicial proceedings.

Point 3. The Court of Appeals, by Failing to Consider Claims 2 and 3 of the Second Patent in Suit, Covering Only a Restricted Portion of the Disclosed Subject Matter, Which Portion is Utilized by Respondent in the Exact Form Shown in the Patent Drawings, Acted in Violation of the Rule that Each Claim of a Patent Must Be Considered Separately, and, in Result, Construed Claims 2 and 3 of the Second Patent in Suit So Narrowly As to Hold Them Not Infringed by a Device Incorporating Every Element of these Claims in the Identical Form Shown in the Patent Drawings.

No rule is better established by authority than that which states that each claim of a patent must be considered separately. In *Altoona Publix Theatres, Inc.* v. *American Tri-Ergon Corp.*, 294 U. S. 477, the Third Circuit Court of Appeals was reversed for upholding validity of a patent without an examination of the separate claims. The necessity for such an examination when validity is conceded and only infringement is in issue would appear equally imperative. This has heretofore been recognized by the Seventh Circuit Court of Appeals in *Sanitary Dist. of Chicago* v. *Activated Sludge*, 90 F. (2d) 727, 730,

* Rule 38, 5 (b) of the Rules of this court.

where the court said that the *Altoona* case reiterated the well-known rule:

> "* * * that each claim of a patent constitutes a separate grant of monopoly, and each must be considered by itself both with respect to validity and infringement."

The decision of the Court of Appeals in the instant case is in direct conflict with the *Altoona* and *Sanitary District* cases because it totally ignores claims 2 and 3 of the second patent in suit. Apparently the Court realized the deficiency of its opinion and attempted to brush it aside by inserting the following footnote to its statement that it would not go into the details of each claim (R. 448):

> "This opinion is written for the parties and their attorneys. Others seeking a complete copy of the two patents, the patents of the prior art, the drawings and the testimony, may find them in the office of the Clerk."

As attorneys for one of the parties we cannot deduce, either from the Court's opinion or from the record, any reason for the conclusion of no infringement of claims 2 and 3 of the second patent in suit. These two claims were treated separately by the lower court, which entered the following finding of fact (R. 211):

> "10. Claims 2 and 3 of the 1,863,465 patent are exactly duplicated in Model 873. Defendant has made no attempt to point out to the Court any elements in these claims which are not to be found in Model 873."

Likewise, in the Court of Appeals respondent made no attempt to point out any element in these claims not found in the accused model.

Point 4. The Decision of the Court of Appeals, Finding No Infringement of Claim 2 of the First Patent and Claims 1, 4, and 5 of the Second Patent, is in Conflict with Its own Prior Decisions and with a Decision of this Court.

The conclusion of the Court of Appeals of non-infringement of claim 2 of the first patent is in irreconcilable conflict with the decision of the same court rendered on the immediately preceding day in *Sutherland Paper Co.* v. *Auburn Carton Corp.*, 48 U. S. P. Q. 612.

Claim 2 contains among other elements the call for "brackets on the frame, longitudinal plates supported by the brackets each having downturned apertured ends" (R. 230). In the accused structure the brackets on the frame, and the longitudinal plates having downturned apertured ends are cast in one piece as part of the frame (R. 40-41; District Court Finding No. 7, R. 210). The longitudinal extension from the frame in the accused device has only one downturned apertured end, as frankly admitted by petitioner's president (R. 50), but the other downturned apertured end is supplied by the increased width of the frame itself having an aperture therein on the same level as the aperture in the downturned end of the longitudinal extension.

The sole function of the structure called for by the claim is to provide a mounting having two bearings for the reciprocating rod carrying the jogger plate. This function is achieved by the accused device in the identical manner. Respondent adduced no testimony on this point, did not put in evidence the file wrapper of this patent, and introduced the patents of the prior art relied upon as limiting the claims without any testimony whatsoever. Nevertheless, the Court of Appeals assumed that the claim in suit was narrowed in the Patent Office in view of the prior art and concluded that infringement was avoided because the brackets and longitudinal plates

were not found in the accused structure as separable pieces. This decision was rendered March 6, 1941.

On March 5, 1941, in the *Sutherland Paper* case the same court stated (48 U. S. P. Q., at p. 614):

> "The question of infringement is a narrow one. Did defendants avoid infringement by using two pieces of paper and gluing them together and thereby making one piece? For the purpose of determining infringement, defendants' two pieces, glued together, were one piece. Infringement was not avoided by using two pieces and gluing them together."

The inconsistency between these two decisions is plain.

Likewise, in *Ace Patents Corp.* v. *The Exhibit Supply Company,* 48 U. S. P. Q. 667, decided March 12, 1941, the Court of Appeals for the Seventh Circuit found infringement by a device made in two parts rather than the one claimed by the patent. Speaking of the defendant's structure, the court said (p. 671):

> "* * * In other words, they have transformed the pin table from a single solid board into a structure composed of a solid board with an overlying metal layer. They have separated one unit into two parts which perform the same function in identically the same manner, and we think infringement is clear."

These decisions undoubtedly express the correct rule, the converse of which is applicable in the case at bar. The requirement of the same Court in the instant case, that not only functions but also structure must be identical in order for infringement to exist, is clearly unwarranted. It throws in doubt one of the fundamentals of patent law which should be re-established by this Court.

Claims 1, 4 and 5 of the second patent (R. 239-240) were found not infringed for two reasons. The first is that these claims call for a "shroud adjustable on said ratchet wheel to predetermine the number of teeth thereof which are engageable by said pawl." For this shroud

the accused device substitutes an eccentric cam mounted upon the same shaft and adjustable in relation to the ratchet wheel in the same manner to achieve the identical purpose (District Court Finding No. 8, R. 211). The use of either a cam or a shroud for this purpose is fully taught by the prior patent art. Quade No. 1,306,024 (R. 382) and Baxter No. 1,438,213 (R. 392) each disclose a shroud used to disengage a pawl from a ratchet. Peters No. 1,239,817 (R. 332), Dudley No. 1,593,573 (R. 426), and Dexter No. 814,522 (R. 292) each disclose a cam used for the same purpose. The two things are therefore old and well-known equivalents coming within the doctrine announced by this court in *Imhaeuser* v. *Buerk,* 101 U. S. 647, at p. 656:

> "Patentees of an invention consisting merely of a combination of old ingredients are entitled to equivalents, by which is meant that the patent in respect to each of the respective ingredients comprising the invention covers every other ingredient which, in the same arrangement of the parts, will perform the same function, if it was well known as a proper substitute for the one described in the specification at the date of the patent. Hence it follows that a party who merely substitutes another old ingredient for one of the ingredients of the patented combination is an infringer if the substitute performs the same function as the ingredient for which it is so substituted, and it appears that it was well known at the date of the patent that it was adaptable to that use. *Gill* v. *Wells,* 22 Wall. 1, 28."

Heretofore the authority of the *Imhaeuser* case was recognized by the Court of Appeals for the Seventh Circuit in its decision in *United States Ozone Co.* v. *United States Ozone Co. of America,* 62 F. (2d) 881, 890. The doctrine was ignored by the Court of Appeals in the instant case.

The second basis for finding non-infringement of claims 1, 4 and 5 of the second patent is the presence in the ac-

cused structure of two reciprocating arms, one for direct connection with the actuating arm and one for direct connection with the jogging means, whereas the claim calls for "a reciprocating arm for direct connection with said actuating arm and said jogging means." No difference in function or manner of operation was even intimated by respondent below because of this duplication of parts. The finding that infringement was avoided for this reason is in square conflict with the two decisions by the Seventh Circuit decided during the same month as the instant case and above quoted, which held that the use of two parts rather than one, where no change in function or mode of operation resulted, did not escape infringement.

We cannot avoid the impression that the opinion of the Court was written to justify a conclusion reached on grounds not stated therein. The lack of all foundation for the conclusion of non-infringement, and indeed the lack of any necessity for that conclusion in view of the action of the Court in sustaining the defense of license, reveals an inconsistency in the decision itself. As the arrangement of parts in the accused device is identical with that in the licensed models 112 and 1121, the conclusion of non-infringement is a finding that the licensee was in error in ever paying petitioner for a license at all.

Point 5. By Ignoring the Findings of the Lower Court, Including a Finding of the Credibility of Petitioner's Only Witness, Whose Testimony Conflicted With That of Respondent's Witnesses in Many Respects, and by Failing to Show Wherein These Findings Were "Clearly Erroneous," the Court of Appeals Has Failed to Comply With Rule 52 (a) of the Federal Rules of Civil Procedure.

The District Court heard all the witnesses and entered detailed findings and conclusions which are not referred

to in the opinion reversing its decision. The credibility of petitioner's sole witness was expressly found, and the Court indicated its disbelief of some of respondent's witnesses (R. 207, 213).

Rule 52 (a) of the Rules of Civil Procedure, providing that findings of the lower court "shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses," was clearly intended to vest some persuasive effect in the judgment of the trial court under the circumstances of the case at bar. This persuasive effect was recognized by the Court of Appeals for the Seventh Circuit in *Webb* v. *Frisch,* 111 F. (2d) 887, 888, but was ignored in the case at bar.

We are aware that this Court has repeatedly declined to issue a writ of certiorari where the sole question presented was the failure of the Court of Appeals to reflect in its opinion any basis for determining that the findings of the lower court were clearly erroneous. The usual case however, presents conflicting evidence from which the District Court and the Appellate Court drew contrary inferences and conclusions. In the instant case the Court of Appeals has not drawn inferences or conclusions from the testimony in a manner contrary to the findings of the District Court but, ignoring those findings, it has likewise ignored the uncontradicted evidence in the case and substituted its own assumptions of fact to support its decision.

Some of these errors of fact were pointed out in our argument under Point 1, *supra.* Another which may be noticed here is the Court's assumption that by the license contract petitioner "sold its business" to the licensee (Opinion, R. 442, 443, 444). It is true that petitioner, in

the license contract, sold its drawings, tools, dies and parts used in the manufacture of Model 112 and 1121 joggers. Accordingly in a sense it sold its business in so far as it pertained to those joggers. In any more general sense, however, this finding is disproved by petitioner's retention of the right to manufacture joggers for the M-24 and Multicolor type presses and also its retention, conceded by the licensee's then Treasurer (R. 71) and by respondent below (see R. 456), of the right to furnish joggers for the Harris and Kelly presses which were utilized in the commercial printing field. These rights to manufacture joggers for the commercial printing field and for the M-24 and Multicolor presses necessarily refute the Court's assumption that petitioner sold its business by signing the license contract. The assumption is further refuted by the restriction in the license itself to two specific models—a limited grant which the Court of Appeals has construed as though it were substantially a broad license to manufacture, use and sell.

Conclusion.

The points above discussed are thought to show that the decision of the Court of Appeals (a) failed to give effect to a clear and unambiguous limitation in the license grant, substituting therefor, on the strength of the supposed intention and subsequent conduct of one party but in conflict with its own prior decisions, a qualification not found in the contract; (b) made many erroneous assumptions of fact contrary to uncontradicted evidence; (c) failed to give two claims the independent consideration demanded by its own prior decisions and by a decision of this Court; (d) violated established and fundamental rules of patent construction in conflict with its own prior decisions and with decisions of this Court;

(e) and, in violation of Rule 52 (a) and its own prior decision, completely ignored findings of fact and of credibility made by the District Court.

We respectfully submit that the decision of the Court of Appeals for the Seventh Circuit involving all of these errors is so far removed from the due exercise of the judicial function that the proper dispensation of justice demands a review by this Court.

Respectfully submitted,

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